It is well settled that the alteration of the time of payment made on the face of a note is a material alteration and destroys the note as an obligation if made without the consent of the parties thereto. *Stayner* v. *Joyce,* 82 Ind. 35; *Stephens* v. *Graham,* 7 Serg. & R. 505; *Ives* v. *Farmer's Bank,* 84 Mass. 236; *Bowers* v. *Rineard,* 209 Pa. St. 545, 58 Atl. 912; *Master* v. *Miller,* 4 T. R. 320; and that such is the rule whether the alteration was made innocently or with fraudulent intent, *Green* v. *Sneed,* 101 Ala. 205; *Heath* v. *Blake,* 28 N. C. 406; *Bigelow* v. *Stephens,* 35 Vt. 525; and that this applies to sureties as well as to principals, *Stayner* v. *Joyce,* supra; *Ball* v. *Beaumont,* 66 Neb. 56, 92 N. W. 170; *Simons & Co.* v. *McDowell,* 125 Ga. 203, 53 S. E. 1031. Although where the consent of the party is expressly or impliedly given, the alteration does not affect his liability on the note. *Wardlow* v. *List,* 41 Oh. St. 414; *Phillips* v. *Cripp,* 108 Iowa 605, 79 N. W. 373; *Schmelz* v. *Rix,* 95 Va. 509. But it is held in accord with the principal case that since the reason of the above rule is that such an alteration destroys the identity of the contract, changes its legal effect, and destroys or contradicts the party's memoranda of his original contract, the better rule of interpretation of such agreements for extension of time is that it contemplates the making of an agreement additional to that evidenced by the note, and that the party does not thereby either expressly or impliedly give his consent to any alteration of the dates of the instrument. The due date is held to be essential to the preservation of the note as evidence, and to prevent the substitution of another instrument in its place. Though no actual injury might result in certain cases yet the inflexibility of the principle is essential to prevent its possibility. *Brannum Lumber Co.* v. *Pickard,* 33 Ind. App. 484; *Stephens* v. *Graham,* 7 Serg. & R. 505; 2 DANIEL, NEG. INSTR., § 1376. Though this rule would work little or no hardship in those jurisdictions where although the alteration is held to destroy the note as an obligation yet the party is allowed to recover on the original consideration (*Otto* v. *Halff,* 89 Tex. 384, 34 S. W. 910; *Booth* v. *Powers,* 56 N. Y. 31; *Jeffrey* v. *Rosenfeld,* 179 Mass. 506), yet whereas in the instant case the due date in the note was not destroyed or erased but only canceled by a line through it, does not the reason of preservation of the identity of the instrument for evidence of the original contract fail and thereby render such a holding unduly technical?

BILLS AND NOTES—MORTGAGE SECURITY AS AFFECTING NEGOTIABILITY.—Below the signature on a promissory note was an endorsement that it was secured by a mortgage on certain real estate which the endorsement described. The mortgage provided that the mortgagor should pay all taxes, charges, and assessments on the property, pay the cost of abstract of title and keep all the buildings insured to a certain value, with a proviso that in case the mortgagor failed to do so, the mortgagee might and recover the amount paid therefor with 8% interest, for which the mortgage should stand security. In an action in equity by maker against the holder in due course to cancel the note and mortgage for fraud in the inducement, the court *held* for the defendant on the ground that the provision in the mortgage was merely for the better-

ment of the security and did not so affect the nature of the debt as to render the note non-negotiable. *Lundeau* v. *Hamilton* (Iowa, 1916), 159 N. W. 163.

It is well settled that a note is negotiable even though secured by a mortgage, and by the weight of authority the mere fact that a note itself contains a reference to such mortgage security endorsed thereon is not sufficient to destroy its negotiability. *Dumas* v. *Bank,* 146 Ala. 226, 40 So. 964; *Biegler* v. *Loan Co.,* 164 Ill. 197; *Zollman* v. *Bank,* 238 Ill. 290, 87 N. E. 297; *Howry* v. *Eppinger,* 34 Mich. 29; *Duncan* v. *Louisville,* 76 Ky. 378; *Bank* v. *Crowell,* 184 Pa. 284; *Bright* v. *Oldfield,* 81 Wash. 442, 143 Pac. 159. The negotiability of the note is not affected by a recital in the endorsement that the note is given according to the conditions of the mortgage, where the terms of the note construed with the mortgage would not impair any essential element of negotiability. *Brooke* v. *Struthers,* 110 Mich. 562, 68 N. W. 272; *Wilson* v. *Campbell,* 110 Mich. 580; *Thorpe* v. *Mindeman,* 123 Wis. 149, 101 N. W. 1117; *Frost* v. *Fisher,* 13 Colo. App. 332, 58 Pac. 872; *Consterdine* v. *Moore,* 65 Neb. 281; *Noell* v. *Gaines,* 68 Mo. 649; *Cwings* v. *McKenzie,* 133 Mo. 323. But where the mortgage contains provisions which do affect some essential element of negotiability, the note is thereby rendered non-negotiable and the assignee is subject to any equities existing in favor of the mortgagor. *Myer* v. *Weber,* 133 Cal. 681, 65 Pac. 1110; *McIntyre* v. *Yates,* 104 Ill. 491; *Brooke* v. *Struthers,* supra; *Taylor* v. *Jones,* 165 Cal. 108; *Allison* v. *Hollembeak,* 138 Iowa 479, 114 N. W. 1059; *Cornish* v. *Wolverton,* 32 Mont. 456, 81 Pac. 4; *Trust Co.* v. *Edgar,* 65 Nebr. 301, 91 N. W. 402; *Garnett* v. *Myers,* 65 Nebr. 287, 91 N. W. 400. As the note is given as evidence of the debt and to fix the terms and times of payment, and the mortgage is simply a pledge of certain property as security for the payment of the note, the weight of authority and better reason would seem to support the holding of the principal case,—that provisions in the mortgage which have to do only with the betterment or preservation of the security do not destroy the negotiability of the note as they do not affect the note itself but only the mortgage. The two contracts are to be construed together, but this simply means that provisions in one limiting or explaining those in the other are to be given effect; hence the holder in due course takes free from equities. *Thorpe* v. *Mindeman,* supra; *Bank* v. *Arthur,* 163 Iowa 211, 143 N. W. 556; *Consterdine* v. *Moore,* supra; *Garnett* v. *Myers,* supra; *Frost* v. *Fisher,* supra; *Hunter* v. *Clark,* supra; *Barker* v. *Satori,* 66 Wash. 260, 119 Pac. 611; *Former* v. *Bank,* 89 Ark. 132; *Carpenter* v. *Longan,* 16 Wall. 271. But see, *Donaldson* v. *Grant,* 15 Utah, 231, 49 Pac. 779; *Myer* v. *Weber,* supra; *Taylor* v. *Jones,* supra; *Briggs* v. *Crawford,* 162 Cal. 124; *Cornish* v. *Wolverton,* supra; *National Hdwe. Co.* v. *Sherwood,* 165 Cal. 1, 130 Pac. 881; *Strong* v. *Jackson,* 123 Mass 60; *Johnson* v. *Carpenter,* 7 Minn. 176; *Helmar* v. *Parsons,* 18 Cal. App. 451, 123 Pac. 356.

CONSTITUTIONAL LAW—EFFECT OF SEVENTH AMENDMENT ON ACTION UNDER FEDERAL STATUTE.—The requirement of the Seventh Amendment to the United States Constitution that trial by jury be according to the course of the common law, *i. e.,* by a unanimous verdict, does not control the state courts